

Message Text

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ACTION L-03

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C O N F I D E N T I A L PANAMA 1911

FOR L/HANSELL FROM AMBASSADOR JORDEN

E.O. 11652: GDS
TAGS: PN, PBOR
SUBJECT: BROOKE UNDERSTANDING

REF: STATE 072065

1. AS YOU NOTE IN REFTEL SENATOR BROOKE'S PROPOSED UNDERSTANDING WOULD CLEARLY BE UNACCEPTABLE TO PANAMA. TO REITERATE FOR GUIDANCE OF ALL HANDS DEALING WITH CONGRESS ON TREATY MATTERS, THE CENTRAL PANAMANIAN POSITION IS ONE OF OPPOSITION TO ANY RESERVATION OR UNDERSTANDING THAT WOULD ALTER ANY ARTICLE IN A SUBSTANTIVE WAY. THEY HAVE SAID, FOR EXAMPLE, THAT EVEN IF WE WERE TO PROPOSE AN INCREASE IN PAYMENTS TO PANAMA UNDER THE TREATY--E.G. FROM 30 CENTS TO 40 CENTS A TON--PANAMA WOULD REFUSE IT.
2. THERE IS ANOTHER ESSENTIAL ELEMENT IN PANAMANIAN ATTITUDES REGARDING ANY CLARIFICATIONS OR INTERPRETATIONS; THAT IS THE REQUIREMENT FOR MUTUALITY IN ALL SUCH PROPOSALS--A POSITION THAT YOU AND OTHERS HAVE SO ABLY ADVOCATED WITH THE CONGRESS.

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3. AS FOR THE SUGGESTED COMPROMISE, IT OBVIOUSLY LACKS THIS SECOND FEATURE. IF PAYMENTS EXCEED COSTS, WE ARE TO BE REIMBURSED. BUT WHAT IF COSTS EXCEED PAYMENTS, AS THEY WELL MAY? THERE IS NOT PROVISION FOR UPPING THE ANTE. SO THE SO-CALLED COMPROMISE IS FLAWED IN AN ESSENTIAL WAY. EVEN IF THERE WERE A MUTUAL PROVISION, I FEEL SURE THE PANAMANIAN WOULD CONSIDER THIS A SUBSTANTIVE CHANGE IN

THE AGREEMENT. YOU SHOULD NOTE HERE THAT IN OUR DISCUSSIONS ON THIS MATTER, THE PANAMANIAN HAVE TAKEN THE POSITION THAT THE \$10 MILLION PAYMENT FOR SERVICES IS A FIXED COST--EVEN IF ACTUAL COSTS EXCEED THAT FIGURE.

4. IN THIS MATTER OF SERVICES, IT SEEMS TO ME THAT THE BASIC THRUST IS TO CONVERT A FIXED-PRICE CONTRACT INTO A COST-RECOVERY CONTRACT--A SUBSTANTIVE CHANGE. AND IT DOES NOT EVEN HAVE THE MERIT--WHICH WE MIGHT USE IN ARGUING THE CASE WITH PANAMA--OF WORKING BOTH WAYS.

5. SENATOR BROOKE SHOULD KNOW THAT WE HAVE A PANAMANIAN ESTIMATE OF COSTS FOR SERVICES OF SLIGHTLY MORE THAN \$10 MILLION. HE SHOULD NOT BE LOOKING SOLELY AT THE CANAL COMPANY'S ESTIMATES ON THIS BECAUSE THEY ARE PROBABLY SERIOUSLY MISLEADING. FOR EXAMPLE, THE PANAMANIAN PLAN TO RECRUIT COLLEGE-TRAINED PEOPLE WITH BILINGUAL CAPABILITY TO TAKE OVER POLICE FUNCTIONS IN WHAT IS NOW THE CANAL ZONE. OBVIOUSLY THEY ARE GOING TO HAVE TO BE PAID MORE THAN THE AVERAGE COP ON THE BEAT IN A REMOTE PROVINCIAL TOWN.

6. THERE IS ONE MORE FACTOR THAT SHOULD RECEIVE ATTENTION. PROVISIONS FOR THE TRANSFER OF EQUIPMENT TO PANAMA UNDER THE TREATY ARE STILL NOT PRECISE OR MUTUALLY AGREED. IF PANAMA, FOR EXAMPLE, HAS TO BUY FIRE ENGINES AND GARBAGE TRUCKS FROM US IN ORDER TO CARRY OUT ITS OBLIGATION TO

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PROVIDE SERVICES, COSTS WOULD SOAR WELL ABOVE THE \$10 MILLION FIGURE. IN OTHER WORDS, WE MAY BE GETTING A REAL BARGAIN AT \$10 MILLION. SO I REALLY DO NOT THINK THERE IS MUCH TO BE GAINED BY THE U.S. OR US TAXPAYERS BY PLAYING AROUND WITH THIS PROVISION. MY FORECAST IS THAT THE DIFFERENCE BETWEEN ACTUAL COSTS AND PAYMENTS UNDER THIS PROVISION IS GOING TO BE MINISCULE--AND MAY BE IN THE U.S. FAVOR. AND, OF COURSE, THE WHOLE THING IS TO BE REVIEWED AND ADJUSTED IN THREE YEARS.

JORDEN

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